IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3744 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHMAD JAFAR ALIAS ANNO MOHMADHANIF SAIYAD

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 3744 of 2001

MS DR KACHHAVAH for Petitioner No. 1

GOVERNMENT PLEADER for Respondents No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 18/10/2001

ORAL JUDGEMENT

In exercise of powers under Section 3(2) of the

Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short), District Magistrate, Bharuch, vide order dated March 24, 2001 (Annexure-A to the petition) detained the petitioner/detenu.

2. The averments made in the petition and the grounds of detention order dated March 24, 2001 manifest that the petitioner is a prohibition bootlegger within the meaning of Section 2(b) of the Act as four cases under the prohibition Act are registered against the petitioner which are pending trial. Besides this, statements of three witnesses are recorded in an unregistered offences, and therefore, according to the detaining authority his activities are prejudicial to the maintenance of public order and therefore, powers under Section 9(2) of the Act are exercised by the detaining authority and detained the petitioner/detenu.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the impugned order of detention on various grounds and prayed to issue appropriate writ, order or direction quashing and setting aside the impugned order of detention and setting him at liberty forthwith.

4. The petitioner has challenged the order of detention on various grounds. Ms D.R.Kachhawah, learned advocate for the petitioner has restricted her arguments to the fact that subjective satisfaction recorded by the detaining authority under Section 9(2) of the Act cannot be considered as genuine. In order to substantiate her arguments she contended that the detaining authority has not supplied the relevant documents relating to the bail application and the orders passed thereon by the Magistrate, which are the vital and important documents, and hence, non-supply of all the documents has seriously prejudiced the right of the petitioner of making an effective representation to the concerned authority and, therefore, right of the petitioner enshrined under Article 22(5) of the Constitution is infringed. To buttress the aforesaid submission, she has drawn the attention of this Court to the representation made by the petitioner on April 4, 2001 which is addressed to the District Magistrate, Bharuch wherein it is categorically mentioned to supply those documents, however, those documents have not been supplied to the petitioner/detenu by the detaining authority till today and, therefore, according to the learned advocate for the petitioner, continued detention of the petitioner has become illegal and on this sole count the petition deserve to be allowed by quashing and setting aside the order of detention and

setting the petitioner at liberty forthwith.

5. Mr. S.S.Patel, learned AGP appeared on behalf of the respondent State has contested the petition by making oral submissions. He, however, does not dispute the factual aspect about the fact that the documents demanded by the petitioner/detenu by way of representation dated April 4, 2001 have not been supplied to him so far. He, however, urged to pass appropriate order in light of the settled principles enunciated by the Supreme Court as well as this Court in this regard.

6. I have considered the submissions advanced by the learned advocates for the parties. I have also perused the averments made in the petition and the documents annexed therewith and the impugned order.

7. On having perusal of the relevant papers it is seen that the petitioner/detenu had made a representation on April 4, 2001 requesting therein to supply relevant documents, i.e. papers relating to bail application and the orders passed thereon by the Magistrate. There is no dispute with regard to the fact that the said documents have not supplied to the petitioner/detenu till today. There is also no dispute with regard to the fact that those documents are relevant, important and vital documents for the purpose of making an effective representation to the concerned authority which has seriously prejudiced the right of the petitioner to make an effective representation and therefore, right of the petitioner of making an effective representation as enshrined under Article 22(5) of the Constitution is infringed.

8. A similar question arose before the Supreme Court in the case of MOHD. ZAKIR V. DELHI ADMINISTRATION AND OTHERS - 1982 SC 696. In the said case it has been observed that if the documents relied on by the authorities are not supplied with grounds of detention, the order of detention is illegal. It is further observed that it is the constitutional mandate which requires detaining authority to give the documents relied on or referred to in the order of detention pari passu the grounds of detention in order that the detenu may make an effective representation immediately instead of waiting for the documents to be supplied with. It is manifest that the question of demanding the documents is wholly irrelevant. The infirmity in this regard is violative of constitutional safeguard enshrined in Article 22(5) of the Constitution.

9. A similar view is also expressed in the case of

KOLI SURESHBHAI BALABHAI PARMAR VS. DISTRICT MAGISTRATE, BHAVNAGAR AND OTHERS 2000 (2) GLH 540. In view of the judgement of the Supreme Court and this Court, non-supply of the documents pari passu though demanded is violative of Article 22(5) of the Constitution as it adversely affected the right of the petitioner of making effective representation before the authority concerned. On this sole ground continued detention of the petitioner has become illegal and the impugned order of detention is vitiated. Therefore, the petition is required to be allowed and the detenu is required to be set at liberty forthwith.

10. For the foregoing reasons, petition succeeds and is accordingly allowed. The impugned order of detention dated March 24, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*